

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

**THOMAS DEWEY PERRY, JR. v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Johnson County**  
**No. 5313     Lynn W. Brown, Judge**

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**No. E2008-02324-CCA-R3-PC - Filed August 24, 2009**

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In this appeal by the petitioner, Thomas Dewey Perry, Jr., the State of Tennessee has moved the court pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals to summarily affirm the Johnson County Criminal Court's dismissal of the petition for post-conviction relief. Because the petitioner challenges a probation revocation proceeding in this post-conviction proceeding, the petition fails to state a post-conviction cause of action, and we summarily affirm the criminal court's order via Rule 20.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**  
**Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Thomas Dewey Perry, Jr., appellant, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; and John H. Bledsoe, Assistant Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

The petitioner filed the post-conviction petition at issue to challenge the criminal court's December 2007 revocation of his probation on his 2001 effective sentence of five years. The petitioner did not appeal from his 2001 guilty-pleaded convictions or his effective five-year sentence. The probation revocation petition was filed in 2006. The petitioner did not appeal from the resulting revocation order. He filed his petition for post-conviction relief on July 29, 2008. The petitioner asserted in the petition that the criminal charges that served as the bases for the probation revocation were ultimately dismissed and that, accordingly, the revocation order is void.

Although the post-conviction petition was filed within one year of the entry of the revocation order, a post-conviction petition may not be used to challenge a revocation of probation. An order revoking probation merely ends the probation term, imposes no new sentence, and

accordingly is not an action that may be challenged via Tennessee's post-conviction procedure. *Young v. State*, 101 S.W.3d 430, 432-33 (Tenn. Crim. App. 2002); *see also Carpenter v. State*, 136 S.W.3d 608, 611-12 (Tenn. 2004) (for purposes of the availability of post-conviction relief, distinguishing between a revocation of a community corrections sentence and a revocation of probation). Moreover, as a challenge to the underlying 2001 convictions or sentences, the 2008 petition for post-conviction relief was barred by the post-conviction one-year statute of limitations. T.C.A. § 40-30-102(a).

We are aware that, in his petition, the petitioner asked that his claim for relief be alternatively treated as a claim for habeas corpus relief. Based upon the petition and the attachments provided, we fail to discern how a writ of habeas corpus is justified. *See, e.g., State v. Larry D. Turnley*, No. 01C01-9403-CR-00094, slip op. at 5 (Tenn. Crim. App., Nashville, Dec. 22, 1994) ("The fact that the Defendant was not convicted of any of the offenses with which he was charged does not mandate dismissal of the probation violation warrant."); *see also State v. Delp*, 614 S.W.2d 395, 396-97 (Tenn. Crim. App. 1980) (revocation may be based upon criminal acts alleged in violation warrant even though defendant was acquitted of charges for underlying acts). Additionally, the petition was not filed in the county "most convenient in point of distance to the applicant" as is required by the habeas corpus statutes. *See* T.C.A. § 29-21-105. The petitioner was convicted in Johnson County, and according to the petition, he was incarcerated in Hardeman County. We observe that Hardeman County lies nearly as far away from Johnson County as a place could be in Tennessee.

For the foregoing reasons, we affirm the order of the criminal court pursuant to Rule 20 of the rules of this court.

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JAMES CURWOOD WITT, JR., JUDGE